

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 60

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO WITNESSES IN CRIMINAL PROCEEDINGS; AMENDING CHAPTER 30, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-3004A, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO ADMINISTRATIVE SUBPOENAS FOR CERTAIN RECORDS AND INFORMATION ISSUED TO A PROVIDER OF ELECTRONIC COMMUNICATION SERVICE OR A PROVIDER OF A REMOTE COMPUTING SERVICE BY THE PROSECUTING ATTORNEY OR ATTORNEY GENERAL.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 30, Title 19, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 19-3004A, Idaho Code, and to read as follows:

19-3004A. ADMINISTRATIVE SUBPOENA - ELECTRONIC COMMUNICATION AND REMOTE COMPUTING SERVICES. (1) A provider of an electronic communication service or remote computing service that is transacting or has transacted any business in the state shall disclose the following to a prosecuting attorney or the attorney general pursuant to an administrative subpoena issued by the prosecuting attorney or attorney general:

(a) Records and information in its possession containing the name, address, local and long distance telephone connection records, or records of session times and durations, length of service, including the start date; and

(b) Records and information in its possession containing the types of service utilized, telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

(c) Records and information in its possession relating to the means and source of payment for such service pertaining to a subscriber to or customer of such service.

The provider of an electronic communication service or remote computing service shall deliver the records to the prosecuting attorney or attorney general within fourteen (14) days of receipt of the subpoena.

(2) For the purpose of this section, the following definitions shall apply:

(a) "Electronic communication service" has the same meaning as provided in section 18-6701(13), Idaho Code.

(b) "Remote computing service" means the provision to the public of computer storage or processing service by means of an electronic communications system as defined in section 18-6701(12), Idaho Code.

(3) In order to obtain the records or information, the prosecuting attorney or attorney general shall certify on the face of the subpoena that there is reason to believe that the records or information being sought are relevant to a legitimate law enforcement investigation

1 concerning a violation of section 18-1505B, 18-1506, 18-1506A, 18-1507, 18-1507A, 18-1508,
2 18-1508A, 18-1509, 18-1509A, 18-1515, 18-2202 or 18-6609, Idaho Code.

3 (4) No subpoena issued pursuant to this section shall demand records that disclose the
4 content of electronic communications or subscriber account records disclosing internet locations
5 which have been accessed including, but not limited to, websites, chat channels and news
6 groups, but excluding servers used to initially access the internet. No recipient of a subpoena
7 issued pursuant to this section shall provide any such content or records accessed, in response
8 to the subpoena.

9 (5) On a motion made by the electronic communication service or remote computing
10 service provider prior to the time for appearance or the production of documents under the
11 subpoena issued pursuant to this section, a court of competent jurisdiction may quash or modify
12 the administrative subpoena if the provider establishes that the records or other information
13 requested are unusually voluminous in nature or if compliance with the subpoena would
14 otherwise cause an undue burden on the service provider.

15 (6) No cause of action shall lie in any court against an electronic communication
16 service or remote computing service provider, its officers, employees, agents or other specified
17 persons for providing information, facilities or assistance in accordance with the terms of an
18 administrative subpoena issued under this section.

19 (7) A person who is subpoenaed under this section and who fails to appear or produce
20 materials as required by the subpoena, or who refuses to be sworn or give testimony, may
21 be found to be in contempt of court. Proceedings to hold a person in contempt under this
22 subsection may be brought in the county where the subpoena was issued.

23 (8) Nothing in this section shall limit the right of a prosecuting attorney or the attorney
24 general to otherwise obtain records or information from a provider of electronic communication
25 service or remote computing service pursuant to a search warrant, a court order or a grand jury
26 or trial subpoena.